

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RENAE HUBBARD, by her
next friend, NANCY HUBBARD,

Plaintiff,

v.

Case No. 04-CV-60190-AA
Hon. Marianne O. Battani
Magistrate Judge Paul J. Komives

CITY OF SOUTHFIELD,
KEITH TOUPIN, NICK CAZAN,
TIM BOAL, COREY BAUMAN,
PATRICIA MEYER, SAM BIGGENS,
DAN DAVIS, MARK WOOD,
LARRY PORTER, AND
BARBARA LAZAR,

Defendants.

**OPINION AND ORDER OF THE COURT ADOPTING THE
MAGISTRATE’S REPORT AND RECOMMENDATION AND
GRANTING IN PART
DEFENDANTS’ MOTION FOR DISCOVERY SANCTIONS AND
DISMISSING THE CASE WITHOUT PREJUDICE**

I. Introduction

Before the Court is defendants’ motion for discovery sanctions. (Doc. Ent. 45.) In their motion, defendants’ claim that they “are entitled to have [p]laintiff’s claims dismissed for [p]laintiff’s repeated failure to cooperate with discovery and appear and testify at her noticed depositions.” Mtn. ¶ 9. On that basis, defendants’ request that this Court grant their motion and dismiss plaintiff’s complaint with prejudice. Mtn. at 3. Plaintiff, on numerous occasions, failed to

cooperate in discovery, including appearing at noticed depositions and answering interrogatories, despite this Court's signed orders on motions to compel. To this date, plaintiff has failed to respond to this Court's orders.

II. Discussion

Pursuant to 28 U.S.C. § 636 (b)(1)(A), on July 25, 2005, this Court referred defendants' motion to Magistrate Judge Paul J. Komives. A hearing on defendants' motion for discovery sanctions was held on August 29, 2005. Plaintiff did not attend the hearing. Nevertheless, Magistrate Judge Komives told defense counsel that he would give notice to plaintiff that she had until October 31, 2005, to respond to defendants' motion, and then defendants would have an opportunity to reply. He told defense counsel that he would then decide the motion on the papers filed. To this date, plaintiff has not filed a response to that motion.

On November 4, 2005, Magistrate Judge Komives issued a Report and Recommendation advising this Court to grant in part defendants' motion for discovery sanctions and dismiss this case without prejudice. Magistrate Judge Komives determined that plaintiff's failure to cooperate in discovery was due to willfulness, bad faith, and/or fault, and plaintiff's failure to appear for depositions inhibited defendants from gathering information and facts necessary to the determination of the case. Defendants are entitled to question plaintiff regarding the bases of her claims.

Magistrate Judge Komives also found that plaintiff, acting in pro per, perhaps was unaware that her failure to show up for her depositions could result in the dismissal of her claims. Therefore, he recommends that this Court limit the dismissal of plaintiff's case to one without prejudice.

Plaintiff has filed no objections to Magistrate Judge Komives' Report and Recommendation and has thereby waived her right to object to the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1 (d)(2).

Accordingly, this Court adopts Magistrate Judge Komives' Report and Recommendation in its entirety, and GRANTS in part defendants' motion for discovery sanctions and DISMISSES THIS CASE WITHOUT PREJUDICE.

IT IS SO ORDERED.

s/Marianne O. Battani
HON. MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

Dated: November 29, 2005

CERTIFICATE OF SERVICE

A copy of this order was served upon Christopher Trainor, and T. Joseph Seward, on this date by electronic filing.

s/Bernadette M. Thebolt
Case Manager